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IN THE
COURT OF APPEALS OF INDIANA

GEORGE JOSEPH JONAITIS, III,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0603-CR-120
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
CRIMINAL DIVISION, ROOM III
The Honorable Diana Ross Boswell, Judge
The Honorable Kathleen Sullivan, Judge Pro Tempore
Cause No. 45G03-0301-FC-00015

April 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, George Joseph Jonaitis, III, challenges the trial court's revocation of his probation, claiming that the trial court improperly relied upon hearsay evidence.

We affirm.

The record reveals that on November 8, 2004, Jonaitis was convicted of one count of child molesting as a Class C felony and determined to be a repeat sexual offender. On January 12, 2005, the trial court sentenced Jonaitis to eight years, with two years to be served on work release, and the remaining six years suspended to probation. Among the conditions of Jonaitis's probation were that he not have contact with the victim of his crime or the victim's family unless approved in advance by his probation officer, that he not engage in any relationship with anyone under eighteen years of age,[1] that he "enroll in, attend, actively participate, and complete a Court approved sex offender treatment program," and that he undergo a mental health evaluation and treatment. App. at 62.

On January 25, 2006, the State filed a petition to revoke probation, alleging that Jonaitis had violated the conditions of his probation by having contact with the victim and by seeing his daughter, who was apparently under the age of eighteen. On January 30, 2006, the State filed an amended petition which further alleged that Jonaitis had been discharged from his therapy due to non-compliance. On February 1, 2006, the trial court held a probation revocation hearing. Over hearsay objections by Jonaitis's counsel, the trial court admitted evidence which indicated that Jonaitis had had contact with both his daughter and the victim of his child molestation. Jonaitis denied any such contact. At the conclusion of the hearing, the trial court found that Jonaitis had violated the terms of his

[1] This included face-to-face, telephonic, written, electronic, or indirect contact.

probation and revoked his probation. Following a hearing held on February 8, 2006, the trial court ordered that Jonaitis serve in the Department of Correction the previously-suspended six years of his sentence. Jonaitis filed a notice of appeal on March 10, 2006.

Upon appeal, Jonaitis claims that the trial court erred in considering hearsay evidence in determining whether he had violated the terms of his probation. Specifically, Jonaitis contends that the trial court should not have admitted into evidence two reports from Jonaitis's therapist which indicated that Jonaitis had admitted to seeing his daughter, his brother's children, and his victim and that he had "hugged his daughter and the victim on several occasions." State's Exhibit 1. According to the therapist, Jonaitis had admitted to seeing these children "approximately 3 days per week for about 3 hrs." Id. Also admitted into evidence was a "Discharge Summary" from the therapist which showed that Jonaitis had been given an "Unsuccessful Termination Discharge" from his therapy because:

> "Mr. Jonaitis, during an individual session with his therapist, admitted to having contact with the victim of his instant offense as well as contact with his daughter and other children in his family. . . ." State's Exhibit 3.

Jonaitis now claims that the trial court erred in relying upon such evidence to revoke his probation. He acknowledges that the Indiana Rules of Evidence do not apply in probation proceedings. See Ind. Evidence Rule 101(c)(2). Indeed, according to our Supreme Court in Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999), in probation revocation hearings, trial judges may consider any relevant evidence bearing some substantial indicia of reliability, including "reliable hearsay." In doing so, the Cox court noted that judges were not bound to admit all evidence presented at such hearings and that:

> "the absence of strict evidentiary rules places particular importance on the fact-finding role of judges in assessing the weight, sufficiency and reliability of proffered evidence. This assessment, then, carries with it a special level of judicial responsibility and is subject to appellate review. Nevertheless, it is not subject to the Rules of Evidence (nor to the common law rules of evidence in effect prior to the Rules of Evidence)." Id.

In the present case, the evidence admitted does appear to be hearsay; indeed, it appears to be double-hearsay, or hearsay within hearsay. That is, the evidence consists of out-of-court statements made by the therapist concerning other out-of-court statements made by Jonaitis, all offered to prove the truth of the matter asserted therein—that Jonaitis had contact with his daughter and the victim.[2] Still, Jonaitis points to nothing which would cause us to question the reliability of these statements. There is no allegation that the therapist, whose job it was to assist Jonaitis, would have any reason to fabricate evidence against him. We cannot say that the trial court abused its discretion in admitting and considering this reliable hearsay.

Jonaitis's argument that this hearsay evidence is insufficient to outweigh his in-court denials of any contact with his daughter or the victim is simply an invitation for us to reweigh the evidence and come to a conclusion different than that of the trial court. As set forth in Cox, supra, a probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. 706 N.E.2d at 551. We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is

[2] The State argues that Jonaitis's statements to his therapist are not hearsay, as defined by Indiana Evidence Rule 801(d)(2) in that they are the statement of a party-opponent offered against that party. Be that as it may, the Evidence Rules do not apply in probation revocation proceedings, and the therapist's out-of-court statements remain hearsay.

substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. Here, the evidence admitted, including the reliable hearsay, was sufficient to establish by a preponderance of the evidence that Jonaitis had violated the terms of his probation, and the trial court could therefore properly revoke Jonaitis's probation.

The judgment of the trial court is affirmed.

SHARPNACK, J., and CRONE, J., concur.